IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1094 OF 2001

IN

WRIT PETITION NO.603 OF 2000

...

Goodlass Nerolac Paints Ltd. ...Appellant

v/s.

Paints Employees Union ...Respondent

...

Mr.S.K. Talsania with Mr.R.N.Shah and Mr.M.L.Londhe i/b Sanjay Udeshi for the Appellant.

Mr.Susheel Mahadeshwar for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 26TH SEPTEMBER, 2007

P.C.:

1. By this Appeal the Appellant challenges the order passed by the learned single Judge of this court dated 1st October, 2001 in Writ Petition No.603 of 2000. That Writ Petition was filed by the present Appellant challenging the order dated 18-2-2000 passed by the Industrial Court in complaint ULP No.993 of 1994. That complaint was filed by the Respondent/union. The admitted facts are that the two workmen employed by the Appellant reported for duty on 3rd August, 1993 in the first shift commencing from 7 a.m. to 3.30 p.m. They were allotted the work of filling one litre pack by the superior of the two workmen. They declined to do that work. Therefore, the management deducted their wages for that day namely 3rd August, 1993. According to the Respondent/union, the conduct of the Appellant of deducting one day's wages from the wages payable to the two workmen amounted to unfair labour practice and therefore the complaint was filed and a direction was sought for withdrawal of the letter dated 19th August, 1993 by which the wages were

deducted, and further direction was sought not to make any deduction in future.

2. In the written statement, the claim of the Union was denied by the employer/Appellant. It was claimed that the work which was allotted to the two workmen, they were under a duty to do that work. They were not justified in declining to do that work and therefore the management was justified in deducting their wages for declining to do that work. Oral evidence was recorded by the Industrial Tribunal. One of the concerned workmen was examined as a witness. In support of the claim that he was not liable to do that work of filling one litre pack, all that he stated was that since about more than 25 years there is an arrangement by which, in varnishing department, the work was given on priority basis. According to that practice that work should have been given to his junior who was on duty. In his cross-examination he stated that he has no evidence that there is any such practice prevalent. Oral evidence was led on behalf of the employer also. The complaint was decided by order dated 18-2-2000. Perusal of the order of the Industrial Court shows that the Industrial court held that the complainant

has established that there is a practice of allotting work in Varnishing Department on priority basis. The Industrial Court has also held that adverse inference is liable to be drawn against the Appellant for not producing the muster roll and other documents. The Industrial Court also held that before deducting the wages the Employer should have held a departmental inquiry because according to him deduction of wages is a punishment which can be imposed for misconduct. The Industrial Court, therefore, allowed the complaint and held that the Appellant is guilty of committing an unfair labour practice. The Employer was also directed to refund the wages deducted from the wages payable to the aforesaid two workmen.

3. The order of the Industrial Court was challenged in Writ Petition No.603 of 2000 before this Court. That writ petition was dismissed by order of the learned single Judge dated 1st October, 2001. The learned single Judge dismissed the petition and confirmed the order passed by the Industrial Court. This appeal is directed against the orders passed by the Industrial Court as also by the learned single Judge of this Court.

4. The learned Counsel appearing for the Appellant submits that the judgment of the Industrial Court which is confirmed by the learned single Judge is based on the alleged practice prevalent in the establishment of the Varnishing Department. He submitted that there is no pleadings in the plaint about any such practice. He submits that except the oral deposition of one Rameshchandra there is no evidence in support of such practice. He submits that the finding of the Industrial Court that the existence of the practice is established is perverse. He further submits that if the complainant has not been able to establish the practice then it is an admitted position that the concerned two workmen attended the factory on the particular date, that they were assigned particular work and that they declined to do it. He submits that in view of this admitted position , if the complainant fails to establish the practice, all facts establishing misconduct are admitted and therefore, there is no question of holding any departmental inquiry or complying with the provisions of principles of natural justice. Reliance was also placed on the judgment of Supreme Court in the case of Regional Manager, SBI v/s. Rakesh Kumar Tewari, (2006) 1 SCC

530.

5. On the other hand, the learned Counsel for the Respondent submits that by oral evidence the existence of the practice has been established. He further, relying on the judgment of the Supreme Court in the case of Bank of India v/s. T.S.Kelawala & ors, 1990 (1) CLR (SC) 748, submits that before deducting wages, it was necessary for the employer to hold departmental inquiry.

6. Now, if in the light of these rival submissions the record of the case is perused, it is clear that following are the admitted positions:

(i) that the concerned two workmen attended the factory on 3-8-1993 in the first shift;

(ii) they were allotted work of filling one litre pack;

(iii) they refused to do that work;

(iv) During the whole day they did not do any other work;

(v) by communication dated 19th August, 1993 they were informed that because they did not do any work on that day they are not entitled to wages of that day;

7. Though the complaint filed by the Respondent runs into several pages, one does not find any justification given in the complaint which entitles the two workmen to refuse to do the work which was assigned to them. The explanation was given in the oral deposition of one of the workmen, who stated thus:

" In 1993 the relations between the management and the workers were not good. In varnishing department the work is given on the priority basis, firstly for pre-marking, then marking and thereafter filling, since about more than 25 years. This arrangement of working has been implemented after discussions with the union. However, there is no writing to that effect."

In cross-examination he stated thus:

"I have no evidence to show that there was oral agreement between the parties for allotment of the work on priority basis as deposed by me. On 3rd August, 1993 I was asked to do the work of filling. I have not done the said work on that day. I had not done any work on that day. It is not correct that there is no practice about allotment of work on priority basis as deposed by me."

8. Neither there are any pleadings nor is there any evidence, oral or documentary, to show how the alleged practice came into existence, when it came into existence and how that practice was established. In the absence of such evidence, in our opinion, the Industrial Court was not justified in recording the finding that the complainant has established the existence of the practice. In fact the oral evidence which was led in relation to the practice, in the absence of any pleadings in the complaint was inadmissible. We thus find that there is virtually no material on record to show that there was any practice for allotment of work on priority basis. If the practice is not established, then it follows that the workmen concerned were not justified in declining to do the work which was assigned to them. It is

also an admitted position that on that date they declined to do the work which was assigned to them, they also did not do any other work. Therefore, there was no dispute between the parties in relation to the facts. Therefore, no inquiry was necessary to be held. If admittedly, the workers had not done any work on that date, and they were not justified in declining to do the work assigned to them, then in our opinion, there was no requirement or necessity for the employer to hold any inquiry or issue any show cause notice before deducting the wages. There is no law authorising the two workmen to decline to do the work unauthorisedly and still claim wages. If such a conduct is tolerated it would encourage indiscipline. In our opinion, therefore, the Industrial Court in stead of making an order in favour of the complainant, should have dismissed the complaint at the first available opportunity.

9. In the result, therefore, the Appeal succeeds and is allowed. The orders of the Industrial Court as also the learned single Judge impugned in the Appeal are set aside. Rule in the writ petition filed by the Appellant is made absolute in terms of prayer clause (a). No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)